IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

WP(C).No. 34946 of 2007(I)

PETITIONER:

ASSAINAR T.K., S/O.UMMER,
THORAKKATTIL HOUSE, VETTATHUR P.O.
MALAPPURAM DISTRICT.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS:

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1. THE FEDERAL BANK LTD., REGISTERED OFFICE
AT ALUVA - REPRESENTED BY DEPUTY GENERAL MANAGER.

2. THE FEDERAL BANK LTD.,
ALANALLUR BRANCH, MANNARKKAT TALUK,
REPRESENTED BY ITS BRANCH MANAGER,
PALAKKAD DISTRICT.

R1 BY ADV. SRI MOHAN JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

W.P.(C) 34946 OF 2007

Dated: December 3, 2007

JUDGMENT

The challenge in this writ petition is against the proceedings initiated against the petitioner under the provisions of the Securitisation and Re-construction of Financial Assets and Enforcement of Security Interest Act.

2. Two contentions are raised: One is that there was no valid mortgage. According to the petitioner, the mortgage in question does not answer the requirements of the clause under sec.58(f) of the Transfer of Property Act, 1982, and therefore proceedings could not have been initiated. Secondly it is argued that the Bank has already filed a suit as OS 84/2005 and that it is during the pendency of the said suit that the proceedings have been initiated. The learned counsel for the petitioner concedes that a Division Bench of this Court has already held that despite the pendency of the suit, proceedings under the Act could be initiated. But he argues that the points which he raises are not issues that are considered in that judgment.

3. But, in my view, the Act itself provides the forum for raising these contentions raised by the petitioner. The merits of the contentions raised against the bank cannot be gone into in a proceeding under Art.226 of the

Constitution. These are matters which have to be raised and adjudicated based on evidence. Therefore, in my view, the petitioner has to be relegated to pursue the statutory remedy available.

The writ petition is dismissed.

ANTONY DOMINIC, JUDGE

mt/-